

1 KAREN P. HEWITT
 United States Attorney
 2 DAVID D. LESHNER
 Assistant United States Attorney
 3 California State Bar No. 207815
 United States Attorney's Office
 4 Federal Office Building
 880 Front Street, Room 6293
 5 San Diego, California 92101
 Telephone: (619) 557-7163
 6
 Attorneys for Plaintiff
 7 UNITED STATES OF AMERICA

8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

08cr 0128-BEN

11 UNITED STATES OF AMERICA,)

Magistrate Case No. 07MJ2936

12 Plaintiff,)

13 v.)

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

14 JOSE LUIS RIOS-FLORES,)

15 Defendant.)

(Pre-Indictment Fast-Track Program)

16
 17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D.
 19 Leshner, Assistant United States Attorney, and defendant JOSE LUIS RIOS-FLORES, by and
 20 through and with the advice and consent of defense counsel, Joseph McMullen, Federal Defenders
 21 of San Diego, Inc., that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
 27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

28 //

DDL:mg:12/21/07

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **January 19, 2008**.

4. The material witness, Juan Daniel Ponce-Cabrera, in this case:

a. Is an alien with no lawful right to enter or remain in the United States;

b. Entered or attempted to enter the United States illegally on or about December 18, 2007;

c. Was found in a vehicle driven by defendant at the Otay Mesa, California Port of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that he was an alien with no lawful right to enter or remain in the United States;

d. Was paying \$2,000 to others to be brought into the United States illegally and/or transported illegally to his destination therein; and,

e. May be released and remanded immediately to the Department of Homeland Security for return to his country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

//

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

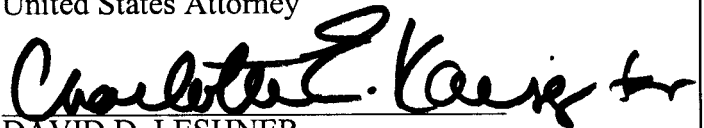
9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to his country of origin.

12 It is STIPULATED AND AGREED this date.


13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 Dated: 1/15/08


17 DAVID D. LESHNER
Assistant United States Attorney

18 Dated: 1/13/08


19 JOSEPH McMULLEN
20 Defense Counsel for Jose Luis Rios-Flores

21 Dated: 1/13/08


22 JOSE LUIS RIOS-FLORES
23 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated: 1/15/08.


United States Magistrate Judge